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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,543	01/12/2001	Walter Horburger	HF-54	1176

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7590 04/03/2003
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EXAMINER	
VERBITSKY, GAIL KAPLAN	
ART UNIT	PAPER NUMBER

2859
DATE MAILED: 04/03/2003 *13*

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/759,543	Applicant(s) Horburger et al.
	Examiner Gail Verbitsky	Art Unit 2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Dec 19, 2002
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on May 13, 2002 is/are accepted or objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: approved disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some* c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) Interview Summary (PTO-413) Paper No(s). _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

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DETAILED ACTION

1. In light of arguments presented by applicant (paper # 11), the finality of the previous Office action (paper # 9) is hereby withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claim 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goss et al. (U.S. 5749152) [hereinafter Goss] in view of Smith et al. (U.S. 3848417) [hereinafter Smith].

Goss discloses in Fig. 2 a spirit level comprising a bubble level (vial) 10, a bubble 46, a recess and a housing (level body) 54.

Goss does not explicitly disclose the particular material to make the level body.

Smith teaches that a float (level) can be made of a foamed aluminum (col. 8, line 32).

Therefore, it would have been obvious to one of ordinary skill to make the level disclosed by Goss of a foamed aluminum, as taught by Smith, so as to have a light weighted and corrosion free structure capable of floating.

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4. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goss and Smith as applied to claims 1-2 above, and further in view of Richardson et al. (U.S. 5607181) [hereinafter Richardson].

Goss and Smith disclose the device as stated above in paragraph 3.

They do not disclose a synthetic non/ (less) porous coating, as stated in claims 3, 5.

Richardson teaches that a porous metal structure can be covered with a non-porous impermeable plastic (synthetic) coating (col. 5, lines 41-50).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to coat the body of the device disclosed by Goss and Smith with a non-porous plastic impermeable coating, as taught by Richardson, so as to make it less susceptible to then environment the level is positioned and to protect the porous inside from possible contamination and moisture, in order to maintain the required accuracy and longevity of the device.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goss and Smith as applied to claims 1-2 above, and further in view of Provi (U.S. 3889353).

Goss and Smith disclose the device as stated above in paragraph 3.

They do not disclose recesses (plurality) in the level body.

Provi discloses in Fig. 1 two recesses for vials (bubbles) 48.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Goss and Smith, so as to have two (plurality) recesses for bubbles, as taught by Provi, in order to provide the user with a plurality of bubbles and thus, more accurate level indication.

Response to Arguments

6. Applicant's arguments filed on December 19, 2002 have been fully considered but they are not persuasive.

With respect to claims 1-2:

Applicant states that the references do not disclose or suggest the present invention, that the Smith reference does not require a particular accuracy, as required by the present invention, and does not suggest a suggestion of making a level of a foam. This argument is not persuasive because:
A) with respect to the particular accuracy: the limitations (the particular accuracy) upon which the applicant relies are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable. Constant v. Advanced Micro-Devices, Inc., 7 USPQ2d 1064.

B) The Smith reference is only used by the Examiner for its teaching that a device made of a foamed aluminum can float and thus, can be used for a floatable level,

With respect to claims 3, 5: Applicant's arguments with respect to claims 3, 5 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices.
8. Any inquiry concerning this communication should be directed to Examiner Verbitsky who can be reached at (703) 306-5473, Monday through Friday, 7:30 to 4:00 ET.

Any inquiry of general nature should be directed to the Group receptionist whose telephone number is (703) 308-0956.

GKV

March 10, 2003



Gail Verbitsky

Patent Examiner, TC 2800